




## MEMORANDUM

DATE	April 5, 2012
TO	ALL HEALING ARTS BOARDS
FROM	 DOREATHEA JOHNSON Deputy Director, Legal Affairs Department of Consumer Affairs
SUBJECT	Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)

This memo addresses a number of questions that have been raised concerning the discretion of healing arts boards, with respect to the Uniform Standards for Substance-Abusing Healing Arts Licensees ("Uniform Standards") that were formulated by the Substance Abuse Coordination Committee and mandated by Business and Professions Code section 315. Previously, there have been discussions and advice rendered, opining that the boards retain the discretion to modify the Uniform Standards. This opinion, largely influenced by the fact that the rulemaking process necessarily involves the exercise of a board's discretion, has been followed by a number of boards as they completed the regulatory process.

Two opinions, one issued by the Legislative Counsel Bureau ("Legislative Counsel") dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General ("Attorney General"), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards. This memo is to advise the healing arts boards of this office's opinion regarding the questions raised, after a review of these two opinions. A copy of each opinion is attached for your convenience.

Questions Presented

1. **Do the healing arts boards retain the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards?**

*Both Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards. We concur with that conclusion.*

2. **Do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case?**

*Legislative Counsel opined that, unless the Uniform Standards specifically so provide, all of the Uniform Standards must be applied to cases involving substance-abusing licensees, as it was their belief that the Legislative intent was to "provide for the full implementation of the Uniform Standards." The Attorney General agreed with Legislative Counsel. Following our review and analysis of Business and Professions Code Section 315, we concur with both the Office of the Attorney General and the Legislative Counsel.*

3. **Is the Substance Abuse Coordination Committee (SACC) the entity with rulemaking authority over the uniform standards to be used by the healing arts boards?**

*The Legislative Counsel concluded that the SACC had the authority to promulgate regulations mandating that the boards implement the Uniform Standards. However, the Office of the Attorney General disagreed and concluded that the SACC was not vested with the authority to adopt regulations implementing the uniform standards. We agree with the Office of the Attorney General. It is our opinion that the authority to promulgate the regulations necessary to implement the Uniform Standards, lies with the individual boards that implement, interpret or make specific, the laws administered by those boards. As the SACC is limited to the creation or formulation of the uniform standards, but is not authorized to implement the laws of the healing arts boards, it does not have authority to adopt regulations to implement those standards. Consequently, we agree with the Attorney General's opinion that the SACC is not the rule-making entity with respect to the Uniform Standards, and therefore has no authority to adopt the Uniform Standards as regulations.*

It is our recommendation that healing arts boards move forward as soon as possible to implement the mandate of Business and Professions Code section 315, as it relates to

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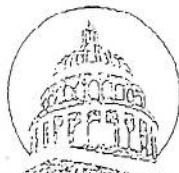
the Uniform Standards. Some of the standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines. For example, Uniform Standard No. 16 which sets forth reporting requirements would not be appropriate for inclusion in disciplinary guidelines.

Please work with your assigned legal counsel to determine how best to implement the Uniform Standards. This should include a discussion as to whether : (1) the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; (2) the implementing regulation should include a definition of (or criteria by which to determine) what constitutes a "substance-abusing licensee."

It is hopeful that the foregoing information addresses your concerns with respect to the implementation of the mandatory uniform standards.

#### Attachments

cc: Denise Brown, DCA Director  
Awet Kidane, DCA Chief Deputy Director  
DCA Legal Affairs Attorneys



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October 27, 2011

Honorable Curren D. Price Jr.  
Room 2053, State Capitol

HEALING ARTS BOARDS: ADOPTION OF UNIFORM STANDARDS - #1124437

Dear Senator Price:

You have asked two questions with regard to the adoption of uniform standards by the Substance Abuse Coordination Committee pursuant to Section 315 of the Business and Professions Code. You have asked whether the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.). You have also asked, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, whether the healing arts boards are required to implement them.

By way of background, Section 315 of the Business and Professions Code<sup>1</sup> provides as follows:

"315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

<sup>1</sup> All further section references are to the Business and Professions Code, unless otherwise referenced.



"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

"(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

"(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

"(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

"(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

"(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

"(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a deferred prosecution stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

"(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

"(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

"(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

"(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

"(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

"(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term." (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (2), Sec. 315, hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department,<sup>2</sup> the State Board of Chiropractic Examiners, and the

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<sup>2</sup> The department's healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.

Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of 16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform standards each healing arts board shall use in dealing with substance-abusing licensees (subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April 2010, and revised those initial standards as recently as April 2011.<sup>7</sup> Although the committee has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those standards pursuant to the rulemaking procedures of the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346, Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 517; hereafter *California Advocates*). The APA may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" (Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation under the APA, unless properly adopted under the procedures set forth in the APA, and the Office of Administrative Law is empowered to determine whether any such guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation under the APA (Sec. 11340.5, Gov. C.).

In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 (hereafter *Tidewater*), the California Supreme Court found as follows:

<sup>7</sup> See [http://www.dca.ca.gov/about\\_dca/sacc/index.shtml](http://www.dca.ca.gov/about_dca/sacc/index.shtml) (as of September 20, 2011).

"A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (*County of Butte v. Emergency Medical Services Authority* (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1, Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates*, *supra*, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.



Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (Tidewater, supra, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

"11340.9. This chapter does not apply to any of the following:

"(a) An agency in the judicial or legislative branch of the state government.

"(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

"(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

"(d) A regulation that relates only to the internal management of the state agency.

"(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

"(1) Enable a law violator to avoid detection.

"(2) Facilitate disregard of requirements imposed by law.

"(3) Give clearly improper advantage to a person who is in an adverse position to the state

"(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(g) A regulation that establishes or fixes rates, prices, or tariffs.

"(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we next turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (*Lambert Sued Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (*DuBais v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443).

Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Notwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172 of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

"The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for

implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation." (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and "provide for the full implementation of the Uniform Standards" (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to "provide for the full implementation of the Uniform Standards" by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.<sup>4</sup>

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<sup>4</sup> Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (See 1859, C.C.P.; *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420, app. dism.; *Kube v. Agricultural Relations Bd.* (1976) 429 U.S. 802, see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.



Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine  
Legislative Counsel



By  
Lisa M. Plummer  
Deputy Legislative Counsel

LMP:syl

**M e m o r a n d u m**

To : Doreathea Johnson  
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Subject : Uniform Standards Related to Substance-Abusing Licensees (Bus. & Prof. Code, §§ 315 - 315.4)

**Executive Summary**

Issues

You asked us to review Legislative Counsel's letter of October 27, 2011, which rendered certain opinions regarding the Substance Abuse Coordination Committee (SACC), which was created by Business and Professions Code section 315 to formulate uniform standards for use by the healing arts boards to deal with substance-abusing licensees. Legislative Counsel opined that:

- (1) SACC was required to formally promulgate the uniform standards as regulations pursuant to the Administrative Procedures Act (APA), and
- (2) the healing arts boards are required to use such standards under Business and Professions Code sections 315.

Summary of Responses

With respect to question (1), we see things differently from Legislative Counsel, in two respects.

First, we believe that SACC's adoption of uniform standards does not need to undergo the formal rule-making process under the APA. While other laws could potentially require the adoption of regulations when the standards are implemented by the boards (such as statutes governing particular boards or the APA's provisions applicable to disciplinary proceedings), we disagree that section 315 itself triggers the need to issue the uniform standards as regulations.

Second, even assuming the uniform standards must be adopted as regulations, we disagree with Legislative Counsel's apparent assumption that SACC would issue the regulations under section 315. The legislative histories of the relevant laws and statutory authorities of the

individual boards indicate that the boards would issue the regulations to implement the uniform standards.

As to question (2), we agree with Legislative Counsel that the healing arts boards must use the uniform standards under sections 315. A board cannot simply disregard a specific standard because it does not like the standard or because it believes that the standard is too cumbersome. However, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. Thus, boards still retain authority to determine if they will undertake certain types of actions if permitted under a specific uniform standard.

### Statutory Background

In 2008, SACC was legislatively established within the Department of Consumer Affairs to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a); Stats. 2008, ch. 548 (SB 1441).) By January 1, 2010, SACC was required to "formulate uniform and specific standards" in 16 identified areas "that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program." (*Id.* at § 315, subd. (c).) These 16 standards include requirements for: clinical diagnostic evaluation of licensees; the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. (*Ibid.*) SACC meetings to create these standards are subject to Bagley-Keene Act open meeting requirements. (*Id.* at subd. (b).)

On March 3, 2009, SACC conducted its first public hearing, which included a discussion of an overview of the diversion programs, the importance of addressing substance abuse issues for health care professionals, and the impact of allowing health care professionals who are impaired to continue to practice. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) During this meeting, SACC members agreed to draft uniform guidelines for each of the standards, and during subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. (*Ibid.*) In December 2009, the Department of Consumer Affairs adopted the uniform guidelines for each of the standards required by SB 1441. (*Ibid.*) These standards have subsequently been amended by SACC, and the current standards were issued in April of 2011.

According to the author of SB 1441 (Ridley-Thomas), the intent of the legislation was to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health-care-related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) The legislation was also meant to ensure uniformity among the

standards established throughout the healing arts licensing boards under the Department of Consumer Affairs. (*Ibid.*) Specifically, the author explains:

SB 1441 is not attempting to dictate to [the health-related boards] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards' diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the Medical Board of California's (MBC) diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees.

(Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.)

In the view of its author, "[t]his bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels." (*Ibid.*)

In 2010, additional legislation was enacted to further implement section 315. Specifically, it provided that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517 (SB 1172).) An order to cease practice does not require a formal hearing and does not constitute a disciplinary action. (*Id.* § 315.4 subds. (b), (c).)

According to the author of SB 1172 (Negrete McLoud), this subsequent statute was necessary "because current law does not give boards the authority to order a cease practice." (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) The author explains:



Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation. [¶] The ability of a board to order a licensee to cease practice under these circumstances provides a delicate balance to the inherent confidentiality of diversion programs. The protection of the public remains the top priority of boards when dealing with substance abusing licensees.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.); as amended June 22, 2010.)

### Legal Analysis

- 1a. Section 315 should be construed as not requiring that the uniform standards be adopted as regulations.

Legislative Counsel opined that SACC must adopt the uniform standards as regulations under section 315, because (1) the standards meet the definition of regulations, (2) none of the express exemptions under Government Code section 11340.9 remove them from the APA rule-making process, and (3) section 315 contains no express language precluding application of the rulemaking provisions of the APA. (October 27, 2011 Letter, p. 5.) We have a different view on the threshold issue of whether the standards qualify as a regulation under section 315.

Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [it has been adopted in compliance with the APA]." (*Id.* § 11340.5, subd. (a).) This requirement cannot be superseded or modified by subsequent legislation, unless the statute does so expressly. (*Id.* § 11346, subd. (a).)

An agency standard subject to the APA has two identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38

Cal.4th 324, 333, quoting *Tidewater Marine Western, Inc. et al. v. Bradshaw* (1996) 14 Cal.4th 557, 571.)

Whether a particular standard or rule is a regulation requiring APA compliance depends on the facts of each case, considering the rule in question, and the applicable statutory scheme. Generally speaking, courts tend to readily find the need for such compliance. We understand that certain healing arts boards have already adopted regulations incorporating the uniform standards. (See, e.g., Cal. Code Regs., tit. 16, § 4147 [Board of Occupational Therapy].) This approach is understandable in light of the usually broad requirement that agency rules be adopted as regulations and, as noted below, may be required by other laws when they are implemented by the boards. Here, however, the wording and intent of section 315 indicate the Legislature did not intend that the initial act of formulating and adopting the uniform standards is within the purview of the formal APA rule-making process.

“The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Bodell Const. Co. v. Trustees of California State University* (1998) 62 Cal.App.4th 1508, 1515.) In determining that intent, courts “first examine the words of the statute itself. Under the so-called ‘plain meaning’ rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. If the language of the statute is clear and unambiguous, there is no need for construction. However, the ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose. If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.” (*Ibid.* [citations omitted].) Courts “must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” (*Ibid.* [citation omitted].) “The legislative purpose will not be sacrificed to a literal construction of any part of the statute.” (*Ibid.*)

In *Paleski v. State Department of Health Services* (2006) 144 Cal.App.4th 713, the Court of Appeal applied these rules of statutory construction and found that the challenged agency criteria were not required to be adopted as regulations under the APA. (*Id.* at pp. 728-729.) In *Paleski*, plaintiff challenged an agency’s criteria for the prescription of certain drugs because the department had not promulgated them in compliance with the APA. (*Ibid.*) The statute, however, expressly authorized the criteria to be effectuated by publishing them in a manual. (*Ibid.*) According to the court, the “necessary effect” of this language was that the Legislature did not intend for the broader notice procedure of the APA to apply when the agency issued the criteria. (*Ibid.*)

Similar reasoning should apply here. Under the plain meaning of section 315, SACC was legislatively established to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a).) The intent of the legislation was to protect the public and to ensure that minimum standards are met and to ensure uniformity among the standards established throughout the healing arts

licensing boards under the Department of Consumer affairs. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) In formulating these uniform standards, SACC was subject to the Bagley-Keene Act, which requires noticed public meetings. Many roundtable discussions were held on the draft uniform standards, including public vetting and public comments. In that way, the affected community learned about the standards and had the opportunity to comment. This is a prime requirement and purpose of the APA rule-making process (see Gov. Code, § 11343 *et seq.*), but it has already been fulfilled by the procedures set forth in section 315. To now require SACC to repeat that process by promulgating the standards as regulations would make little sense and be duplicative.

Nor does the process for the formulation of the standards set forth in section 315 comport with the other purposes and procedures of the APA. During the APA rule-making process, an agency must provide various reasons, justifications, analyses, and supporting evidence for the proposed regulation. (Gov. Code, § 11346.2.) Those provisions and other provisions of the APA are intended to address the proliferation, content, and effect of regulations proposed by administrative agencies. (*Id.* §§ 11340, 11340.1.) Here, the agency is not proposing to adopt the uniform standards. The Legislature has required that the standards adopted by SACC, be uniform, and be used by the boards. Given this statutory mandate that they be implemented, subjecting the uniform standards to substantive review under the APA again makes little sense.<sup>1</sup>

**1b. The SACC would not be the rule-making entity, even if the uniform standards would have to be adopted as regulations.**

Even assuming that APA compliance was required under section 315, it is doubtful that SACC would carry the responsibility to adopt regulations. The second component of a regulation requires that the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.” (*Morning Star Co.*, *supra*, 38 Cal.4th at p. 333.) Here, SACC was mandated to create the uniform standards to be used by separate boards; the SACC’s creation of the uniform standards does not implement,

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<sup>1</sup> Even though the standards do not have to be promulgated as regulations by SACC under section 315, this does not mean that certain regulations would not arguably be required on the part of some or all of the boards under other statutory schemes, such as the laws applicable to a particular board or the APA’s provisions on quasi-adjudicatory proceedings. This type of analysis would require a fact specific, case-by-case study of each board’s practices and its regulatory scheme and may include consideration of: (1) whether a board’s statutory authority requires the adoption of regulations related to actions against substance-abusing licensees, (2) whether current regulations conflict with the standards, and (3) whether in an administrative adjudicative setting, the standards are considered “penalties” and thus must be adopted as regulations under section 11425.50, subdivision (e), of the Government Code.



interpret, or make any law more specific. (Bus. & Prof. Code, § 315, subds. (a), (c).) The only express statutory role of the SACC is to determine the uniform standards in the first place.<sup>2</sup>

The boards are then required to use and apply the standards and have much clearer authority to adopt regulations. “Each of the boards [within the Department of Consumer Affairs] exists as a separate unit, and has the function of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and hold hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board.” (Bus. & Prof. Code, § 108.)

The legislative history for section 315 also supports this conclusion. According to its author, section 315 was adopted to protect the public by ensuring that, at a minimum, a set of best practices or standards *were adopted by health care related boards to deal with practitioners with alcohol or drug problems*. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008, emphasis added.)<sup>3</sup> Practically speaking, it would be difficult for the SACC (or the Department of Consumer Affairs) to draft regulations applicable to all boards, given that they are unique and deal with different subject areas, unless such regulations were adopted wholesale, on a one-size-fits-all basis. As explained below, while the healing arts boards must use the standards, they only have to use the ones that apply to their procedures.

Thus, while section 315 does not require regulations to initially adopt the standards, the boards (and not SACC) would more reasonably be tasked with this responsibility.

**2. The healing arts boards must use the uniform standards to the extent that they apply.**

The original language of section 315 is clear that the standards must be used. (Bus. & Prof. Code, § 315, subd. (a) [“uniform standards that will be used by healing arts boards”], subd. (b) [“uniform standards . . . that each healing arts board shall use in dealing with substance-abusing licenses”].) Legislative Counsel was asked to opine on whether subsequent legislation (Bus. & Prof. Code, § 315.4) somehow made these uniform standards discretionary. We agree with

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<sup>2</sup> The SACC is a committee formed by various executive officers of healing arts boards and other public officials formed within the Department of Consumer Affairs. (Bus. & Prof. Code, § 315, subds. (a).)

<sup>3</sup> As discussed shortly, the legislative history for follow-up legislation similarly explains that its purpose was to provide statutory authority for some healing arts boards to issue regulations to implement certain of the uniform standards. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.)



Legislative Counsel's conclusion that section 315.4 did not make the uniform standards optional. (Oct. 27, 2011, Letter, p. 9.)

Section 315.4 was enacted two years after section 315, and provides that that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517, (SB 1172).) If a board adopts such regulations, there is nothing to indicate that use of uniform standards created under section 315 is optional. Such an interpretation would be contrary to the legislative intent. Section 314.5 was enacted for the limited purpose to give boards the authority to order a licensee to cease practice, as this was not provided for in section 315. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) By no means was the intent to transform the mandatory uniform standards of section 315 into optional suggestions. As the author explains:

Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

In addition, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. (See e.g. Uniform Standard # 1 ["If a healing arts board orders a licensee . . . to undergo a clinical diagnosis evaluation, the following applies: . . ."].) The standards must be applied, however, if a board undertakes a particular practice or orders an action covered by the standards. A determination regarding a board's specific application (or not) of certain uniform standards would have to be based on a fact specific, case-by-case review of each board and its regulatory scheme. However, once a board implements a procedure covered by the uniform standards, it cannot disregard the applicable uniform standard because it disagrees with the standard's substance.

### Conclusion

For the reasons stated above, in our view, section 315 can be read to preclude the necessity to adopt regulations when the uniform standards are issued initially. And even if regulations were required under section 315, SACC would not be tasked with this responsibility. We also

Doreathea Johnson  
February 29, 2012  
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believe that the healing arts boards must use the uniform standards where an agency undertakes an action covered by the standards.

Please feel free to contact me if you have any questions or would like to discuss the above.

:KAL

cc: Peter K. Southworth, Supervising Deputy Attorney General

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The second part of the paper describes the methodology used in the study, including the data collection and analysis techniques. The third part of the paper presents the results of the study, and the fourth part discusses the conclusions and implications of the findings.

The study was conducted using a quantitative research design. Data was collected from a sample of 100 participants, and the results were analyzed using statistical software. The findings of the study indicate that there is a significant relationship between the variables being studied.

The results of the study suggest that the research objectives have been achieved. The findings provide valuable insights into the topic and have important implications for future research.

In conclusion, the study has shown that the research objectives have been achieved and that the findings have important implications for future research.





Board of Psychology  
Proposed Language

Proposed changes are shown by underlining for new text and ~~strikethrough~~ for deleted text.

DISCIPLINARY GUIDELINES AND UNIFORM  
STANDARDS RELATED TO SUBSTANCE ABUSE

Section 1397.12 of Division 13.1 of Title 16 of the California Code of Regulations is renumbered as section 1395.2 to now be included in Article 7, and amended to read:

**Previously Approved language, showing changes**

**Option 1**

**§ 1397.12. § 1395.2. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider ~~the disciplinary guidelines entitled and apply the Disciplinary Guidelines and “Uniform Standards Related to Substance Abuse,” as amended 2/07”~~ (June 2012) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public.

(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all relevant terms and conditions contained in the Disciplinary Guidelines, the Uniform Standards Related to Substance Abuse shall apply as written, and be used in the order placing the license on probation.

(c) Deviation from these Disciplinary Guidelines and orders, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; -for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary ~~problems~~ issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.

**Deleted:** a violation

**Deleted:** for a substance abusing licensee

**Deleted:** unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or exclusion of a specific standard as a term of probation

**Deleted:** Notwithstanding subsection (b), or where an order is required by statute,

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## **Option 2**

### **§ 1397.12. § 1395.2. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider ~~the disciplinary guidelines entitled and~~ apply the Disciplinary Guidelines and “Uniform Standards Related to Substance Abuse,” ~~as amended 2/07”~~ (June 2012) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public.

(b) If a licensee has not yet been identified as a substance-abusing licensee (for example, through stipulation) where the grounds for discipline involve drugs and/or alcohol, a clinical diagnostic evaluation shall be ordered and the remaining provisions of the Uniform Standards may, in the discretion of the Board, be made contingent upon a clinical diagnostic evaluator’s report that the individual is a substance-abusing licensee. The clinical diagnostic evaluator’s report shall be submitted in its entirety to the board.

(c) Deviation from these Disciplinary Guidelines and orders, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; -for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary problems issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.





### Option 3

#### **§-1397.12. § 1395.2. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider ~~the disciplinary guidelines entitled and~~ apply the Disciplinary Guidelines and “Uniform Standards Related to Substance Abuse,” as amended 2/07<sup>22</sup> (June 2012) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public.

(b) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with section 11500), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, in addition to any and all relevant terms and conditions contained in the Disciplinary Guidelines, the Uniform Standards Related to Substance Abuse shall apply as written and be used in the order placing the license on probation.

(c) Deviation from these Disciplinary Guidelines-and-orders, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; -for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary problems issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.



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Department of Consumer Affairs  
Board of Psychology  
Proposed Language

Proposed changes are shown by underlining for new text and ~~striketrough~~ for deleted text.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND  
DISCIPLINARY GUIDELINES

Section 1397.12 of Division 13.1 of Title 16 of the California Code of Regulations is renumbered as section 1395.2 to now be included in Article 7, and amended to read:

**§ 1397.12. § 1395.2. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider ~~the disciplinary guidelines entitled and~~ apply the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines,” as amended 2/07” (February 2011) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the consequences that apply to a substance abusing licensee.

(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or exclusion of a specific standard as a term of probation.

(c) Notwithstanding subsection (b), or where an order is required by statute, d~~Deviation~~ from these Uniform Standards and Disciplinary G~~u~~idelines and orders, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; -for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary problems issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.



DRAFT

STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
BOARD OF PSYCHOLOGY



UNIFORM STANDARDS RELATED TO  
SUBSTANCE ABUSE  
AND DISCIPLINARY GUIDELINES

ADOPTED 11/92 - EFFECTIVE 1/1/93 –  
AMENDED 7/1/96, AMENDED 4/1/99, AMENDED 2/07, AMENDED 2/11

California Board of Psychology

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE  
AND DISCIPLINARY GUIDELINES**

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Board of Psychology

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE  
AND DISCIPLINARY GUIDELINES**

**Article 7. Standards Related to Denial, Discipline, and Reinstatement of Licenses**

**§ 1395.2. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Psychology shall consider and apply the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines," (February 2011) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the consequences that apply to a substance abusing licensee.

(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or exclusion of a specific standard as a term of probation.

(c) Notwithstanding subsection (b), or where an order is required by statute, deviation from these Uniform Standards and Disciplinary Guidelines and orders, including the standard terms of probation, is appropriate where the Board of Psychology in its sole discretion determines that the facts of the particular case warrant such a deviation; -for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary issues.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 315, 315.2, 3.15.4, 2960, 2960.05, 2960.1, 2960.5, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2964.5, 2964.6, 2965, 2966 and 2969, Business and Professions Code; and Section 11425.50(e), Government Code.

## I. INTRODUCTION

The Board of Psychology of the California Department of Consumer Affairs (hereinafter "the Board") is a consumer protection agency with the primary mission priority of protecting consumers of psychological services from potentially harmful practices unsafe, incompetent, or negligent practitioners in exercising its licensing, regulatory, and disciplinary functions. In keeping with its mandate to protect this particularly vulnerable population, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Psychology Licensing Law. This document, designed for use by administrative law judges, attorneys, psychologists, registered psychologists, psychology assistants, and others involved in the disciplinary process, and ultimately the Board, may be revised from time to time.

For purposes of this document, the term "license" includes a psychology assistant registration and registered psychologist registration. The terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions that address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that an rare individual case may necessitate a departure from these guidelines for disciplinary orders. However, in such a rare case, the mitigating or aggravating circumstances must be detailed in the "Finding of Fact," which is in every Proposed Decision, so that the circumstances can be better understood and evaluated by the Board before final action is taken.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the Board expects outright revocation or denial of the license. This is particularly true in any case of patient sexual abuse. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines would be appropriate.



## BOARD INFORMATION

### Board of Psychology Contact Information:

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(916) 263-2699 / FAX (916) 263-2697  
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### Staff with Authority to Negotiate Settlements:

~~Robert Kahane, Executive Officer~~ (916) 263-2699  
~~Jeffrey Thomas, Assistant Executive Officer~~ (916) 263-2699  
~~Gina Bayless, Enforcement Coordinator~~ (916) 263-0324

### A. UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

The following Uniform Standards describe the consequences that apply to a substance abusing applicant or licensee found to have committed a violation or violations related to substance abuse. If the conduct found to be a violation involves drugs and/or alcohol, the applicant or licensee shall be presumed to be a substance-abusing applicant or licensee for purposes of section 315 of the Code. If the applicant or licensee does not rebut that presumption, the Uniform Standards for a substance abusing applicant or licensee shall apply unless the applicant or licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or exclusion of a specific standard as a term of probation. Except where an order is required by statute, deviation from these Uniform Standards and Disciplinary Guidelines and orders, including the standard terms of probation, is appropriate where the Board determines that the facts of the particular case warrant such a deviation. The Board may impose more restrictive conditions if necessary to protect the public.

#### Clinical Diagnostic Evaluations: [Uniform Standard #1]

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders.

The evaluator shall be approved by the Board, and unless permitted by the Board or its designee, shall be a California-licensed psychologist or physician and surgeon. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. Unless the presumption that the applicant or licensee is a substance-abusing applicant or licensee is rebutted, and the public can be adequately protected, the Board shall order the applicant or licensee to cease any practice of psychology pending the clinical diagnostic evaluation and a Board determination upon review of the diagnostic evaluation report that the applicant is safe to begin or the licensee is safe to return to practice.

**Clinical Diagnostic Evaluation Report: [Uniform Standard #1, 6]**

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have had a financial, personal, business or other relationship with the licensee. ~~within the last five (5) years.~~ The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.



When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

**Group Support Meetings:** [Uniform Standard #5]

The Board may order support group attendance, and may require that group be facilitated.

If the board requires a licensee to participate in group support meetings, either because it is the decision of the Board or it is within the discretion of the Board staff when determining the nature of group support meetings, the following shall apply:

1. When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

2. Group Meeting Facilitator Qualifications and Requirements. If ordering a facilitated group support meeting, the following shall apply:

a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

b. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee, in the last five (5) years.

c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

d. The facilitator shall report any unexcused absence within 24 hours.

**Worksite Monitor Requirements:** [Uniform Standard # 7]

If the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.
- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance and behavior.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.



The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

**Major and Minor Violations:** [Uniform Standard # 9, 10]

If a licensee commits a major violation, the Board may order the licensee to cease any practice of psychology, inform the licensee that he or she has been so ordered and that he or she may not practice unless notified by the Board, and refer the matter for disciplinary action or other action as determined by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance absence from at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

**DRUG TESTING STANDARDS** [Uniform Standard #4, 8, 9,]

If a licensee tests positive for a banned substance, the Board shall order that the licensee cease any practice of psychology, and contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The

Board shall also notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly alcohol or drug tested at least 52 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least 36 times per year, and at any time as directed by the board.
2. Alcohol or drug testing may be required on any day, including weekends and holidays.
3. Except when directed, the scheduling of alcohol or drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.
5. Licensees shall be alcohol or drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative alcohol or drug testing location(s) must be approved by the board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

## **B. DISCIPLINARY GUIDELINES**

### **II. GENERAL CONSIDERATIONS**

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior record of discipline or citations.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Pursuant to section 2960.1 of the Code (set out below in the Penalty Guidelines), any proposed decision or decision that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

Pursuant to section 2964.3 of the Code, any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure or registration by the board.



### III. PENALTY GUIDELINES

The following is an attempt to provide information regarding the range of offenses under the Psychology Licensing Law and the California Code of Regulations and the appropriate penalty for each offense. The general bases for discipline are listed by statute number in the Business & Professions Code. An accusation, statement of issues, or other charging document may also allege violations of other related statutes or regulations. The bases are followed by the Board-determined penalty, including the names and numbers for the optional terms and conditions. The standard terms of probation as stated shall be included in all decisions and orders. Each penalty listed is followed in parenthesis by a number which corresponds with a number under the chapter "Terms and Conditions of Probation." Legal "enacted" dates follow the definition of some of the most frequently used disciplinary subdivisions. Examples are given for illustrative purposes, but no attempt is made to catalog all possible offenses. Except as provided in the Uniform Standards Related to Substance Abuse, the The Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations that take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision for final action.

#### Business and Professions Code § 2960

#### 2960      GENERAL UNPROFESSIONAL CONDUCT —Enacted 3/30/94

MAXIMUM : Unprofessional conduct involving inappropriate behavior resulting in substantial harm to patient(s).

Penalty:      Revocation; denial of license or registration.

MINIMUM: Unprofessional conduct involving inappropriate behavior resulting in minimal or no harm to patient(s).

Penalty: Revocation stayed, Depending upon the circumstances, up to 5 year probation, psychological evaluation and/or therapy if appropriate (2) and (7), California Psychology Supplemental Examination (CPSE) (8), and standard terms and conditions (15-2930)

**2960(a) CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO THE PRACTICE OF PSYCHOLOGY - ~~Enacted 1/1/67 for convictions involving moral turpitude. Amended 1/1/76 for convictions substantially related to the practice of psychology.~~**

MAXIMUM: ~~Conviction of a crime of violence against a person or property or economic crime resulting in substantial harm to patient(s).~~

Penalty: Revocation; denial of license or registration application.

MINIMUM: ~~Conviction of other crime resulting in minimal or no harm to patient(s).~~

Penalty: Revocation stayed, 5 year probation, billing monitor (if financial crime) (4), therapy (7), CPSE (8), restitution (if appropriate) (9), ~~community service (14)~~, and standard terms and conditions (15-2930).

**2960(b) USE OF CONTROLLED SUBSTANCE OR ALCOHOL IN A DANGEROUS MANNER**

MAXIMUM: ~~Abuse of alcohol or a controlled substance resulting in substantial harm to patient(s).~~

Penalty: Revocation; denial of license or registration application.

MINIMUM: ~~Abuse of alcohol or a controlled substance to the extent that ability to safely render psychological services is impaired.~~

Penalty: Revocation stayed, 5 year probation, physical examination (if appropriate) (3), practice monitor (4), psychological evaluation and ongoing therapy (if

appropriate) (2) and (7), clinical diagnostic evaluation (10), participation in an alcohol/drug abuse treatment program (4011) and ~~continuing therapy with a psychologist trained in substance abuse treatment ongoing support group (4412)~~, abstain from all non-prescribed, controlled drugs and alcohol/biological fluid and specimen testing (4213), and standard terms and conditions (15-2930).

**2960(c) FRAUDULENTLY OR NEGLECTFULLY  
MISREPRESENTING THE TYPE OR STATUS OF LICENSE  
OR REGISTRATION ACTUALLY HELD**

~~MAXIMUM: Misrepresentation of status resulting in substantial harm to patient(s).~~

Penalty: Revocation; denial of license or registration application.

~~MINIMUM: Misrepresentation of status resulting in minimal or no harm to patient(s).~~

Penalty: Revocation stayed, 5 year probation, community service (14), and standard terms and conditions (15-2930).

**2960(d) IMPERSONATING ANOTHER PERSON HOLDING A  
PSYCHOLOGY LICENSE OR ALLOWING ANOTHER  
PERSON TO USE HIS OR HER LICENSE OR  
REGISTRATION**

~~MAXIMUM: Impersonation or use resulting in substantial harm to patient(s).~~

Penalty: Revocation; denial of license or registration application.

~~MINIMUM: Impersonation or use resulting in minimal or no harm to patient(s).~~

Penalty: Revocation stayed, 5 year probation, psychological evaluation (2), CPSE (8), community service (14), and standard terms and conditions (15-2930).

**2960(e) PROCURING A LICENSE BY FRAUD OR DECEPTION**

Penalty: Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

**2960(f) ACCEPTING REMUNERATION OR PAYING FOR REFERRALS TO OTHER PROFESSIONALS - Enacted 1/1/68 (formerly subdivision(e))**

MAXIMUM: ~~Accepting substantial remuneration or paying for referrals resulting in substantial harm to patient(s).~~

Penalty: Revocation, denial of license or registration application.

MINIMUM: ~~Accepting remuneration in isolated instances resulting in minimal or no harm to patient(s).~~

Penalty: Revocation stayed, 5 year probation, billing monitor (4), CPSE (8), and standard terms and conditions (15-2930).

**2960(g) VIOLATING SECTION 17500 OF THE BUSINESS AND PROFESSIONS CODE REGARDING ADVERTISING**

Repeated infractions of statute regarding advertising.

Penalty: Revocation stayed, 5 year probation, community service (44) and standard terms and conditions (15-2930).

**2960(h) VIOLATION OF CONFIDENTIALITY - Enacted 1/1/68 (formerly subdivision (g))**

MAXIMUM: ~~Unlawfully divulging information resulting in substantial harm to patient(s).~~

Penalty: Revocation, denial of license or registration application.

MINIMUM: ~~Unlawfully divulging information resulting in minimal or no harm to patient(s).~~



Penalty: Revocation stayed, 5 year probation, practice monitor (4), CPSE (8), and standard terms and conditions (15-2930).

**2960(i) VIOLATION OF RULES OF PROFESSIONAL CONDUCT  
(FOR EXAMPLE, VIOLATION OF SECTION 1396.1,  
INTERPERSONAL RELATIONSHIP) - Enacted 1/1/68  
(formerly subdivision (h))**

See 2960

MAXIMUM: Revocation; denial of license or registration.

MINIMUM: Revocation stayed, Depending upon the circumstances,  
up to 5 year probation, psychological evaluation and/or  
therapy if appropriate (2) and (7), California Psychology  
Supplemental Examination (CPSE) (8), and standard  
terms and conditions (15-30).

**2960(j) GROSS NEGLIGENCE IN THE PRACTICE OF  
PSYCHOLOGY - Enacted 1/1/68 (formerly subdivision (i))**

MAXIMUM: Gross negligence resulting in substantial harm to  
patient(s).

Penalty: Revocation; denial of license or registration application.

MINIMUM: Gross negligence resulting in minimal or no harm to  
patient(s).

Penalty: Revocation stayed, 5 year probation, psychological  
evaluation prior to resumption of practice (condition  
precedent) (2), practice monitor/billing monitor (4),  
patient population restriction (if appropriate) (6), therapy  
(7), CPSE (8), and standard terms and conditions (15-  
2930).

**2960(k) VIOLATING ANY PROVISION OF THIS CHAPTER OR  
REGULATIONS DULY ADOPTED THEREUNDER - Enacted  
1/1/68 (formerly subdivision (j))**

No guidelines. Refer to underlying statute or regulation.



**2960(l) AIDING OR ABETTING UNLICENSED PRACTICE**

**MAXIMUM:** ~~Multiple instances of aiding or abetting unlicensed practice, which results in substantial harm to patient(s).~~

**Penalty:** Revocation; denial of license or registration application.

**MINIMUM:** ~~Isolated instance of aiding or abetting unlicensed practice resulting in minimal or no harm to patient(s).~~

**Penalty:** Revocation stayed, 5 year probation, CPSE (8), and standard terms and conditions (15-2930).

**2960(m) DISCIPLINARY ACTION BY ANOTHER STATE AGAINST A LICENSE OR REGISTRATION**

In evaluating the appropriate penalty, identify the comparable California statute(s) and corresponding penalty(s).

**2960(n) DISHONEST, CORRUPT OR FRAUDULENT ACT -Enacted 4/1/80**

**MAXIMUM:** ~~Dishonest or fraudulent act resulting in substantial harm to patient(s).~~

**Penalty:** Revocation; denial of license or registration application.

**MINIMUM:** ~~Dishonest or fraudulent act resulting in minimal or no harm to patient(s).~~

**Penalty:** Revocation stayed, 5 year probation, psychological evaluation and ongoing therapy if appropriate (2), billing monitor (4), CPSE (8), full restitution (9), community service (14) and standard terms and conditions (15-2930).

**2960(o); 726 ANY ACT OF SEXUAL ABUSE, OR SEXUAL RELATIONS WITH A PATIENT OR FORMER PATIENT WITHIN TWO YEARS FOLLOWING TERMINATION OF THERAPY, OR SEXUAL MISCONDUCT THAT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF A PSYCHOLOGIST OR**

**PSYCHOLOGICAL ASSISTANT OR REGISTERED  
PSYCHOLOGIST.**

When a finding of sexual misconduct occurs, revocation or surrender of license/registration and/or denial of application for license or registration MUST be the penalty ordered by the Administrative Law Judge. **NO MINIMUM PENALTY.**

**NOTE: Business and Professions Code Section 2960.1 states:**  
**“Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any acts of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.”**

**2960(p)      FUNCTIONING OUTSIDE FIELD(S) OF COMPETENCE –  
Enacted 1/1/83 (Renumbered 1/1/93. Formerly subdivision  
(o))**

**MAXIMUM:** ~~Functioning outside field(s) of competence resulting in substantial harm to patient(s).~~

**Penalty:**      Revocation; denial of license or registration application.

**MINIMUM:** ~~Functioning outside field(s) of competence resulting in minimal or no harm to patient(s).~~

**Penalty:**      Revocation stayed, 5 year probation, practice monitor (4), patient population restriction (6), CPSE (8), and standard terms and conditions (15-2930).

**2960(q)      WILLFUL FAILURE TO VERIFY AN APPLICANT'S  
SUPERVISED EXPERIENCE (Renumbered 1/1/93.  
Formerly subdivision (p))**

**Penalty:**      Revocation stayed, 5 year probation and standard terms and conditions (15-2930).

**2960(r)      REPEATED NEGLIGENT ACTS –Enacted 3/30/94**

MAXIMUM: ~~Repeated negligent acts resulting in substantial harm to patient(s).~~

Penalty: Revocation; denial of license or registration application.

MINIMUM: ~~Repeated negligent acts resulting in minimal or no harm to patient(s).~~

Penalty: Revocation stayed, depending on the circumstances, up to 5 year probation, psychological evaluation prior to resumption of practice (condition precedent) (2), practice monitor (4), CPSE (8), and standard terms and conditions (15-2930).

## TERMS AND CONDITIONS OF PROBATION

Terms and conditions of probation are divided into two categories. The first category consists of **optional terms and conditions** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **standard terms and conditions**, which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-14) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (15-2930).

#### **IV. OPTIONAL TERMS AND CONDITIONS**

Listed below are optional conditions of probation that the Board would expect to be included in any Proposed Decision or Stipulation as appropriate.

##### **1. Actual Suspension**

As part of probation, respondent is suspended from the practice of psychology for \_\_\_\_\_ days beginning with the effective date of this Decision. During the suspension, any probation period is tolled and will not commence again until the suspension is completed.

**RATIONALE: A suspension longer than 6 months is not effective, and a violation or violations warranting a longer suspension should result in revocation, not stayed.**

##### **2. Psychological Evaluation**

Within 90 days of the effective date of this Decision and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist. Respondent shall sign a release that authorizes the evaluator to furnish the Board a current DSM IV diagnosis and a written report regarding the respondent's judgement judgment and/or ability to function independently as a psychologist with safety to the public, and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. The evaluation should not be disclosed to anyone not authorized by the board or by court order.

If the Board concludes from the results of the evaluation that respondent is unable to practice independently and safely, upon written notice from the Board respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice. The term of probation shall be extended by During this suspension period of time that he or she was ordered to cease practice, ~~probation will be tolled and will not commence again until the suspension is completed.~~



If not otherwise ordered herein, if ongoing psychotherapy is recommended in the psychological evaluation, the Board will notify respondent in writing to submit to such therapy and to select a psychotherapist for approval by the Board or its designee within 30 days of such notification. The therapist shall (1) be a California-licensed psychologist with a clear and current license; (2) have no previous business, professional, personal or other relationship with respondent; (3) not be the same person as respondent's practice or billing monitor. Frequency of psychotherapy shall be determined upon recommendation of the treating psychotherapist with approval by the Board or its designee; ~~however, psychotherapy shall, at a minimum, consist of one one-hour session per week.~~ Respondent shall continue psychotherapy until released by the approved psychologist and approved by the Board or its designee. The Board or its designee may order a re-evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board any information the Board or its designee deems appropriate, including quarterly reports of respondent's therapeutic progress. Respondent shall furnish a copy of this Decision to the therapist. If the therapist determines that the respondent cannot continue to independently render psychological services, with safety to the public, he/she shall notify the Board immediately.

Respondent shall pay all costs associated with the psychological evaluation and ongoing psychotherapy. Failure to pay costs will be considered a violation of the probation order.

#### **Option of Evaluation as a Condition Precedent**

In some cases, the psychological evaluation may be imposed as either a condition precedent to the stay of revocation, or to the issuance or reinstatement of a license, so that the respondent or petitioner is not entitled to begin or continue practice until found to be safe to do so. In such cases, the following language shall be used as the first sentence of the first paragraph of this term:

As a condition precedent to the [stay of revocation] [issuance [re-issuance] of a license [registration], within 90 days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist.

In addition, the following language shall also be used as the first sentence of the second paragraph of this term:

If the Board concludes from the results of the evaluation that [respondent] [petitioner] is unable to practice independently and safely, upon written notice from the Board [respondent shall, in accordance with professional standards, appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice] [respondent or petitioner shall not be issued or re-issued a license until a Board-appointed evaluator determines that respondent or petitioner is safe to practice].

**RATIONALE:** Psychological evaluations shall be utilized when an offense calls into question the judgement judgment and/or emotional and/or mental condition of the respondent or where there has been a history of abuse or dependency of alcohol or controlled substances. When appropriate, respondent shall be barred from rendering psychological services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the Board has accepted and approved the evaluation.

### **3. Physical Examination**

Within 90 days of the effective date of this Decision, respondent shall undergo a physical examination by a licensed physician and surgeon licensed in California and approved by the Board. Respondent shall sign a release authorizing the physician to furnish the Board a report that shall provide an assessment of respondent's physical condition and capability to safely provide psychological services to the public. If the evaluating physician and surgeon determines that respondent's physical condition prevents safe practice, or that he or she can only practice with restrictions, the physician shall notify the Board, in writing, within five (5) working days.

The Board shall notify respondent in writing of the physician and surgeon's determination of unfitness to practice, and shall order the respondent to cease practice or place restrictions on respondent's practice. Respondent shall comply with any order to cease practice or restriction of his or her practice, and shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days. Respondent and shall not resume practice until a Board-appointed evaluator determines that respondent is safe to practice, and the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. During this suspension period, The term of probation will shall be tolled extended by the period of time



~~during which respondent is ordered to cease practice and will not commence again until the suspension is completed.~~ If the evaluating physician determines it to be necessary, a recommended treatment program will be instituted and followed by the respondent with the physician providing written progress reports to the Board on a quarterly basis or as otherwise determined by the Board or its designee.

It shall be the respondent's responsibility to assure that the required quarterly progress reports are filed by the treating physician in a timely manner. Respondent shall pay all costs of such examination(s). Failure to pay these costs shall be considered a violation of probation.

**RATIONALE:** This condition permits the Board to require the probationer to obtain appropriate treatment for physical problems/disabilities that could affect safe practice of psychology. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.

#### **4. Practice Monitor/Billing Monitor/Worksite Monitor**

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a psychologist who has agreed to serve as a practice monitor/billing monitor/worksite monitor. The practice monitor/billing monitor shall (1) be a California-licensed psychologist with a clear and current license; (2) have no prior business, professional, personal or other relationship with respondent; and (3) not be the same person as respondent's therapist. The monitor's education and experience shall be in the same field of practice as that of the respondent. The practice monitor/billing monitor may also serve as a worksite monitor, if ordered, as long as he or she also meets the requirements of the Uniform Standards for a worksite monitor.

Once approved, the monitor shall submit to the Board or its designee a plan by which respondent's practice shall be monitored. Monitoring shall consist of a least one hour per week of individual face to face meetings and shall continue during the entire probationary period unless modified or terminated by the Board or its designee. The respondent shall provide the monitor with a copy of this Decision and access to respondent's fiscal and/or patient records. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to divulge any information

that the Board may request. It shall be respondent's responsibility to assure that the monitor submits written reports to the Board or its designee on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential patients of any term or condition of probation that will affect their therapy or the confidentiality of their records (such as this condition, which requires a practice monitor/billing monitor). Such notifications shall be signed by each patient prior to continuing or commencing treatment.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

If the monitor quits or is otherwise no longer available, respondent shall notify the Board within 10 days and get approval from the Board for a new monitor within 30 days. If no new monitor is approved within 30 days, respondent shall not practice until a new monitor has been approved by the Board or its designee. During this period of non-practice, The term of probation will be tolled and will not commence again until the period of non-practice is completed shall be extended by the period of time during which respondent is ordered to cease practice. Respondent shall pay all costs associated with this monitoring requirement. Failure to pay these costs shall be considered a violation of probation.



**RATIONALE:** Monitoring shall be utilized when respondent's ability to function independently is in doubt or when fiscal improprieties have occurred, as a result of a deficiency in knowledge or skills, or as a result of questionable judgement judgment. The term for a worksite monitor is to be used in cases where the conditions of the Uniform Standards Related to Substance Abuse apply.

**5. Notification to Employer [uniform standard #3]**

When currently employed, applying for employment or negotiating a contract, or contracted to provide psychological services, respondent Respondent shall provide to each of his or her employers, supervisor, or contractor, or prospective employer or contractor where respondent is providing or would provide psychological services, a copy of this Decision and the Accusation or Statement of Issues before commencing accepting or continuing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

The respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board in writing of the facility or facilities at which the person is providing psychological services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor, or contractor.

**RATIONALE:** The condition provides the Board with a mechanism for ensuring that the employer providing psychological services or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety. The term for notification to employer is also to be used in cases where the conditions of the Uniform Standards Related to Substance Abuse apply.

## 6. Restriction of Patient Population

Respondent's practice shall be restricted to exclude patients who are. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation.

**RATIONALE:** In cases wherein some factor of the patient population at large (e.g. age, gender, practice setting) may put a patient at risk if in therapy with the respondent, language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.

## 7. Psychotherapy

Within 90 days of the effective date of this Decision, a therapist shall be selected by the respondent for approval by the Board. The therapist shall (1) be a California-licensed psychologist with a clear and current license; (2) have no previous business, professional, personal, or other relationship with respondent; and (3) not be the same person as respondent's monitor. Respondent shall furnish a copy of this Decision to the therapist. Psychotherapy shall, at a minimum, consist of one hour per week over a period of 52 consecutive weeks after which it may continue or terminate upon the written recommendation of the therapist with written approval by the Board or its designee. The Board or its designee may order a re- psychological evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board or its designee any information the Board deems appropriate, including quarterly reports of respondent's therapeutic progress. It shall be respondent's responsibility to assure that the required quarterly reports are filed by the therapist in a timely manner. If the therapist notifies the Board that the therapist believes the respondent cannot continue to safely render psychological services, upon notification from the Board respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is again safe to practice. During this period of non-practice, ~~The term of probation shall be tolled and will not commence again until the period of non-practice is completed~~



extended by the period of time during which respondent is ordered to cease practice.

If, prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of psychology without restrictions, the Board shall retain continuing jurisdiction over the respondent's license and the period term of probation shall be extended until the Board or its designee determines that the respondent is mentally fit to resume the practice of psychology without restrictions.

Cost of psychotherapy is to be paid by the respondent.

**RATIONALE:** The need for psychotherapy may be determined pursuant to a psychological evaluation or as evident from the facts of the case. The frequency of psychotherapy shall be related to the offense involved and the extent to which the offense calls into question the judgement judgment, motivation, and emotional and/or mental condition of the respondent.

## **8. Examination(s)**

*California Psychology Supplemental Examination (CPSE) Term  
MUST INCLUDE Either Option 1 or Option 2:*

### **Option 1 (Condition Subsequent)**

Respondent shall take the CPSE within 90 days of the effective date of the decision. If respondent fails such examination, respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until the re-examination has been successfully passed, as evidenced by written notice to respondent from the Board or its designee. During this period of non-practice, ~~The term of probation shall be tolled and will not commence again until the suspension is completed~~ extended by the period of time during which respondent is ordered to cease practice. It is respondent's responsibility to contact the Board in writing to make arrangements for such examination. Respondent shall pay the established examination fee(s). Reexamination after a failure must be consistent with 16 C.C.R. section 1388(f), and any applicable sections of the Business & Professions Code.

## Option 2 (Condition Precedent)

~~Respondent shall not~~ is ordered to cease the practice of psychology until respondent has taken and passed the CPSE. During this period of ~~non-practice~~, The term of probation shall be ~~is tolled and will not~~ commence again until the suspension is completed ~~extended by the~~ period of time during which respondent is ordered to cease practice. It is respondent's responsibility to contact the Board in writing to make arrangements for such examination(s). Respondent shall pay the established examination fee(s). Reexamination after a failure must be consistent with 16 C.C.R. section 1388(f), and any applicable sections of the Business & Professions Code.

**RATIONALE:** In cases involving evidence of serious deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to take and pass the CPSE during the course of the probation period. In some instances, it may be appropriate ~~for to~~ order that practice to be suspended ~~ceased~~ until the examination is has been taken and passed (condition precedent).

## 9. Restitution

Within 90 days of the effective date of this Decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$\_\_\_\_\_ paid to \_\_\_\_\_. Failure to pay restitution shall be considered a violation of probation. Restitution is to be paid regardless of the tolling of probation.

**RATIONALE:** In offenses involving economic exploitation, restitution is a necessary term of probation. For example, restitution would be a standard term in any case involving Medi-Cal or other insurance fraud. The amount of restitution shall be at a minimum the amount of money that was fraudulently obtained by the licensee. Evidence relating to the amount of restitution would have to be introduced at the Administrative hearing.

## 10. Clinical Diagnostic Evaluation [Uniform Standards #s 1&2]

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation



being performed.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of psychology, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of psychology for minimum of one month pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent shall not practice psychology until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any terms or conditions made by the Board as a result of the clinical diagnostic evaluation.

**RATIONALE: This term is to be used in cases where the conditions of the Uniform Standards Related to Substance Abuse apply. Whether the Respondent is also ordered to cease practice pending the evaluation and report is dependent upon whether he or she has rebutted the presumption of being a substance-abuser, and whether the public can be adequately protected without a cease practice order.**

**40.11. Alcohol and/or Drug Abuse Treatment Program [uniform standard #6]**

Effective-Within thirty (30) days from the effective date of this Decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program (a minimum of six (6) months duration) or an equivalent program as approved by the Board or its designee.

Components of the treatment program shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation.

Respondent shall provide the Board or its designee with proof that the

approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by respondent. All costs associated with the program shall be paid by respondent.

However, if respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

**RATIONALE: This condition is to be used in cases where the grounds for discipline involve drugs and/or alcohol, and where the conditions of the Uniform Standards Related to Substance Abuse apply.**

**14.12. Ongoing Treatment Support Group Program** [uniform standard #5]

~~Respondent shall participate in on-going treatment and/or out-patient Treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the Board or its designee at least once a week during the entire period of probation. Respondent shall provide documentation of attendance at Twelve Step meetings or the equivalent on a quarterly basis to the Board or its designee. All expenses associated with the treatment shall be paid by respondent.~~

Respondent shall begin and continue attendance at a support/recovery group (e.g., Twelve Step meetings or the equivalent, or a facilitated group with a psychologist trained in alcohol and drug abuse treatment) as ordered by the Board or its designee. When determining the type and frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.



Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

b. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.

c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

d. The facilitator shall report any unexcused absence within 24 hours.

**RATIONALE:** Alcohol and/or other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by respondent has impaired respondent's ability to safely provide psychological services to patients. This condition must be accompanied by condition #1213. The term is also to be used in cases where the conditions of the Uniform Standards Related to Substance Abuse apply.

**12.13.**      **Abstain from Drugs and Alcohol and Submit to Tests and Samples** [uniform standard #4]

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, or any drugs requiring a prescription unless respondent provides the Board or its designee with documentation from the treating physician and surgeon the prescribing health professional that the prescription was legitimately issued and is a necessary part of the treatment of respondent.

Respondent shall abstain completely from the use intake of alcoholic beverages.



Respondent shall undergo random; and directed biological fluid or specimen testing as determined by the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (52) random tests per year within the first year of probation, and a minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. Any confirmed positive finding will be considered a violation of probation. Respondent shall pay all costs associated with such testing. The length of time and frequency of this testing condition will be determined by the Board or its designee. If Respondent tests positive for a banned substance, Respondent shall be ordered by the Board to immediately cease any practice of psychology, and may not practice unless and until notified by the Board. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to alcohol and/or drug testing. Respondent shall submit to his or her alcohol and/or drug test on the same day that he or she is notified that a test is required. All alternative testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

### **Drugs - Exception for Personal Illness**

Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a physician and surgeon. Respondent shall provide the Board or its designee with written documentation from the treating physician and surgeon who prescribed medication(s). The documentation shall identify the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

**RATIONALE:** This condition provides documentation that the probationer is substance or chemical free. It also provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances. The term is to be used in cases where the conditions of the Uniform Standards Related to Substance Abuse apply. Whether the Respondent is ordered to submit to a minimum of random 52 tests for the first year and thereafter under the Uniform Standards is dependent upon whether he or she has rebutted the presumption of



being a substance-abuser, and whether the public can be adequately protected without an order subjecting respondent to a minimum number of tests.

#### **13.14. Educational Review**

Respondent shall submit to an educational review concerning the circumstances that resulted in this administrative action. The educational review shall be conducted by a board-appointed expert familiar with the case. Educational reviews are informational only and intended to benefit respondent's practice. Respondent shall pay all costs associated with this educational review.

**RATIONALE: In cases involving evidence of deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to submit to an educational review during the course of the probation period.**

#### **14. Community Service - Free Services**

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval a community service program in which respondent shall provide free psychological services on a regular basis to community, charitable facility, governmental entity or a non-profit corporation tax exempt under the Internal Revenue Code for at least \_\_\_\_\_ hours a month for the first \_\_\_\_\_ months of probation.~~

**NOTE: In addition to other terms of probation, community service work may be required for relatively minor offenses that do not involve deficiencies in knowledge, skills or judgement. Community service may be appropriately combined with restitution or other conditions as a term of probation.**

## **V. STANDARD TERMS AND CONDITIONS**

**(To be included in all Proposed Decisions and Stipulations)**

### **15. Coursework**

Respondent shall take and successfully complete not less than \_\_\_\_\_ hours each year of probation in the following area(s) \_\_\_\_\_. Coursework must be pre-approved by the Board or its designee. All coursework shall be taken at the graduate level at an accredited educational institution or by an approved continuing education provider. Classroom attendance is specifically required; correspondence or home study coursework shall not count toward meeting this requirement. The coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval a plan for meeting the educational requirements. All costs of the coursework shall be paid by the respondent.

### **16. Ethics Course**

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. This course must be in addition to any continuing education courses that may be required for license renewal. The cost associated with the law and ethics course shall be paid by the respondent.

### **17. Investigation/Enforcement Cost Recovery**

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$\_\_\_\_\_ within the first year of probation. Such costs shall be payable to the Board of Psychology and are to be paid regardless of whether the probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by respondent to the Board. However, full payment of any and all costs required by this condition must be received by the board no later than six (6) months prior to the scheduled termination of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

## **18. Probation Costs**

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (June 30). Failure to pay such costs shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay probation monitoring costs.

**~~Authority: Business and Professions Code Section 2964.6 (effective 1/1/95).~~**

## **19. Obey All Laws**

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

## **20. Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation. Quarterly reports attesting to non-practice status are to be submitted if probation is tolled.

Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

## **21. Probation Compliance**

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned Board of Psychology probation monitor. Respondent shall contact the assigned probation monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with (1) complainants associated with the case; (2) Board members or members of its staff; or (3) persons serving the Board as expert evaluators.

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be communicated in writing to the Board or its designee within 15 calendar days.

## **22. Interview with Board or Its Designee**

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

## **23. Changes of Employment**

Respondent shall notify the Board in writing, through the assigned probation monitor, of any and all changes of employment, location, and address within 30 days of such change.

## **24. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice**



~~In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing psychology in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within to California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. During periods of non-practice, the probationary period is tolled and respondent's license or registration shall be placed on inactive status. The probationary period will not commence again until respondent activates his or her license and resumes practicing psychology in the state of California. However, the Board may require respondent to complete certain terms of probation that are not associated with active practice and respondent will be required to pay cost recovery and restitution as ordered. All provisions of probation other than the quarterly report requirements, restitution, cost recovery, and continuing education requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the term of probation shall be extended for the period of time respondent was out of state.~~

Unless by Board order, in the event respondent is not engaging in the practice of psychology while residing in California, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of cessation of practice and expected return to practice. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. All provisions of probation shall remain in effect, and the term of probation shall be extended for the period of time respondent was not engaged in the practice of psychology as required by other employment requirements of this order.

## **25. Employment and Supervision of Trainees**

If respondent is licensed as a psychologist, he/she shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees during the course of this probation. Any such supervisorial relationship in existence on the effective date of this probation shall be terminated by respondent and/or the Board.

**26. Instruction of Coursework Qualifying for Continuing Education**

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

**26. 27. Future Registration or Licensure**

If respondent is registered as a psychological assistant or registered psychologist and subsequently obtains other psychological assistant or registered psychologist registrations or becomes licensed as a psychologist during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future registrations or licensure shall not be approved, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

**28. Request for Modification** [Uniform Standard #s 11, 12]

"Request" as used in this condition is a request made to the Board's designee, and not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board staff pursuant to the Uniform Standards:

- a. Demonstrated sustained compliance with current recovery program.
- b. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
- c. Negative alcohol and drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

**27. 29. Violation of Probation**

If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period term of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.



**28.30.        Completion of Probation**

Upon successful completion of probation, respondent's license shall be fully restored.

**29.31.        License Surrender**

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of his or her license or registration. The Board of Psychology or its designee reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within 15 calendar days, deliver respondent's pocket and/or wall certificate to the Board or its designee and respondent shall no longer practice psychology. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a psychology license or registration, the application shall be treated as a petition for reinstatement of a revoked license or registration.

**VI. STANDARD TERMS AND CONDITIONS**

**(To be included in ALL Stipulations for Surrender or Revocation)**

**30.32. Reinstatement and Investigation/Enforcement Cost Recovery**

Respondent may not petition for reinstatement of a revoked or surrendered license/registration for three years from the effective date of this Decision. If the Board grants future reinstatement, respondent agrees to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$ \_\_\_\_\_ payable to the Board upon the effective date of such reinstatement Decision.

**34.33.        Relinquish License**

Respondent shall relinquish his/her wall and pocket certificate of licensure or registration to the Board or its designee once this Decision becomes effective and upon request.

## **ACCUSATIONS**

~~Effective January 1, 1993, the Board received authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that cost recovery be included in the pleading and made part of ALL Accusations. Effective January 1, 1995, Business and Professions Code Section 2964.6 gives the Board the authority to recover probation monitoring costs. The Board requests that probation monitoring cost recovery be included in the pleading and made part of ALL Accusations.~~

## **STATEMENTS OF ISSUES**

~~The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee or registrant would be cause for license or registration discipline.~~

## **STIPULATED SETTLEMENTS**

~~The Board will consider agreeing to stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to a settlement with the Board, the Board would prefer that respondent admit to one or more of the principle violations set forth in the Accusation. In stipulated revocations or surrenders, the Board expects language that would cause respondents to admit to all charges upon filing future Petitions for Reinstatement. The Deputy Attorney General must accompany all proposed Stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.~~

## **VI. PROPOSED DECISIONS**

**A. The Board requests that Proposed Decisions include the following:**

~~A. Names and addresses of all parties to the action.~~

~~B. a. Specific code section(s) violated with the definition of the code(s) in the Determination of Issues.~~



- C. b. Clear description of the acts or omissions which caused the violation.
- D. c. Respondent's explanation of the violation(s) in the Findings of Fact if he/she was present at the hearing.
- E. d. Description of all evidence of mitigation, rehabilitation and aggravation presented at the hearing.
- F. e. Explanation of any deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the order first list any combination of the Optional Terms and Conditions (1-13) as they may pertain to the particular case followed by **all** of the Standard Terms and Conditions (14-2930).

If the respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, such inaction shall result in a default decision to revoke licensure or deny application.

## **B. Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License**

### Disciplining of a License/Registration:

"IT IS HEREBY ORDERED that psychologist's license No. [#] issued to respondent Dr. [name], Ph.D., is REVOKED. However, the order of revocation is STAYED and the license is placed on probation for [#] years subject to the following terms and conditions:"

### Applicant Placed on Probation:

"IT IS HEREBY ORDERED that the application for licensure as a psychologist of respondent [name], Ph.D. is GRANTED, and upon successful completion of all licensing requirements a license shall be issued, provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the application is ordered denied, and a new application for licensure will be required. Upon issuance, however, said license shall immediately be REVOKED. However, the order of revocation shall be STAYED, and the license is

placed on probation for [#] years subject to the following terms and conditions:"

#### Reinstatement of a License:

"The petition of [name], Ph.D., for reinstatement of licensure is hereby GRANTED. Psychologist license number [#] shall be reinstated provided that all licensing requirements are completed within two years of the effective date of this decision. If a license is not issued within two years of the effective date of this decision, the petition is ordered denied, and a new petition for reinstatement will be required. Upon issuance, however, the license shall be immediately revoked. However, the order of revocation shall be STAYED, and petitioner's license shall be placed on probation for a period of [#] years subject to the terms and following conditions:"

### **VII. REHABILITATION CRITERIA FOR REINSTATEMENT/PENALTY RELIEF HEARINGS**

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Denials and Reinstatements in California Code of Regulations, Title 16, section 1395; and (2) the evidence presented by the petitioner of his/her rehabilitation. The Board will not retry the original revocation or probation case.

The Board will consider, pursuant to Section 1395, the following criteria of rehabilitation:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) of crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

The Board requests that comprehensive information be elicited from the petitioner regarding his/her rehabilitation. The petitioner should provide details that include:

- A. Why the penalty should be modified or why the license should be reinstated.
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
- C. Continuing education pertaining to the offense and its effect on the practice of psychology.
- D. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
- E. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- F. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Finally, the Board requests that the above criteria and evidence be evaluated in light of this statement of what should be presented to demonstrate rehabilitation:

Rehabilitation is a process. It is evaluated according to an internal subjective measure of attitude (state of mind) and an external objective measure of conduct (state of facts). The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation for why it is wrong. Petitioner must also show a demonstrated course of conduct that convinces and assures the Board that the public would be safe if petitioner is permitted to be licensed to practice psychology. Petitioner must show a track record of reliable, responsible, and consistently appropriate conduct.

In the Petition Decision, the Board requests a summary of the offense and the specific codes violated that resulted in the revocation, surrender or probation of the license.



If the Board should deny a request for reinstatement of licensure or penalty relief, the Board requests that the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches that demonstrate rehabilitation. Petitioners for reinstatement must wait three years from the effective date of their revocation decisions or one year from the last petition for reinstatement decisions before filing for reinstatement.

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such inaction shall result in a default decision to deny reinstatement of the license or registration or reduction of penalty.

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